

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION**

**IN RE:**

**CHAPTER 7**

**IMPERIAL FROZEN FOODS OP CO, LLC,**

**CASE NO. 19-05419-5-SWH**

**Debtor.**

**EMERGENCY EX PARTE MOTION FOR APPROVAL OF COMPROMISE  
AND SETTLEMENT WITH SUPERIOR FOODS INC. AND  
SUPERIOR FOODS INTERNATIONAL LLC**

NOW COMES Gregory B. Crampton, Chapter 7 Trustee herein, ("Trustee") and moves the Court for the entry of an Order authorizing and allowing, pursuant to 11 U.S.C. Section 105 and Bankruptcy Rule 9019, a compromise and settlement resolution with Superior Foods Inc. and Superior Foods International LLC (collectively, "Superior") (i) resolving and terminating a Covenant-Not-To-Compete held by, and in favor of Imperial Frozen Foods Op Co, LLC ("Debtor"), and (ii) resolving and settling a disputed ownership of "consignment" inventory. In support of this Motion, the Trustee respectfully shows the Court as follows:

1. This matter is a core proceeding pursuant to 28 U.S.C. § 157, and the Bankruptcy Court for the Eastern District of North Carolina has jurisdiction over this matter pursuant to 28 U.S.C. §§ 151, 157, and 1334.

2. Imperial Frozen Foods Op Co, LLC ("Debtor") filed a voluntary petition for relief under Chapter 7 on November 22, 2019 ("Petition Date"). As of the date of this Motion, Debtor has not yet filed its Schedules or Statement of Affairs.

3. Gregory B. Crampton was appointed Chapter 7 Trustee of the estate of Debtor on November 26, 2019 and is qualified and now acting as such Trustee.

4. Among the assets in this proceeding are certain tangible personal property belonging to the estate, consisting of food product inventory (the "Food Product"). Such Food Product includes: (i) Finished Goods, (ii) Bulk food product, and (iii) Packaging. By Order entered on December 9, 2019, the Court established a Sale Procedure for such Food Product (Dkt. 32).

5. Besides Food Product, the assets of the Debtor consist of the Other Assets, comprising tangible and intangible, wherever located, including machinery and equipment, general intangibles (including books and records and customer/supplier contact information, Sunkistsnacks website, domain names and social media pages), contract rights, intellectual property, trademark license agreements, and product brand names.

6. On information and belief, ACF FinCo I LP (“Ares”) has a perfected security interest in all or substantially all assets of the Debtor, whether tangible or intangible, wherever located, including the Other Assets, and all products and proceeds of the foregoing, pursuant to a Loan and Security Agreement dated October 1, 2018, which security interest was perfected by a UCC Financing Statement filed on September 20, 2018 in the Delaware Secretary of State’s Office, File No. 20186510040. (Debtor is a Delaware limited liability company.) On information and belief, the outstanding debt balance owed to Ares as of November 19, 2019, approximated \$8.9 million.

7. On information and belief, Tree Line Direct Lending LP (“Tree Line”) has a perfected security interest in all, or substantially all, assets of the Debtor, including the Other Assets, pursuant to a Credit Agreement dated as of October 1, 2018, which security interest was perfected by a UCC Financing Statement filed on October 2, 2018 in the Delaware Secretary of State’s Office, File No. 20186810796. On information and belief, the outstanding debt balance owed to Tree Line as of November 22, 2019, approximated \$30,531,313.91 million.

8. On information and belief, Ares and Tree Line entered into an Intercreditor Agreement dated as of October 1, 2018 (“Intercreditor Agreement”) setting forth their agreement as to certain of their respective rights and obligations with respect to the assets and properties of the Debtor and other obligors, including but not limited to the relative priority of their respective liens against such assets and properties.

9. All of the assets of the Debtor, including its Other Assets, are significantly overencumbered by the outstanding balances owed to Ares and Tree Line, holders of perfected security interests in the Other Assets.

10. Subject to the written Consent of Ares and Tree Line, the Trustee proposes, subject to Court approval, to enter into a compromise and settlement with Superior Foods, Inc. and Superior Foods International LLC based on the following terms and conditions:

(a) Superior purchases \$176,549.00 of bulk or finished goods inventory, or such larger amount required to obtain the consent of Ares, which larger amount must be accepted by Superior, for the following inventory (which designation and selection of inventory may be changed by the parties):

From the Bulk List:

Code	Item Number	Item Description	Qty	USD/lb
VEG	011-905352C	Mukimame	63,233	\$0.55
VEG	012-900352C	Edamame	120,450	\$0.55
VEG	021-900352	Green Beans 4-5 Sievewhole	26,463	\$0.50

VEG	054-900352	Broccoli Florets 1 - 2"	15,840	\$0.55
VEG	054-900352	Broccoli Florets 1 - 2"	223	\$0.55
VEG	084-900352	Cauliflower 1.5-2.5	22,536	\$0.52
TBC	458-900452C	Mango Chunks	38,490	\$0.70
Other	465-905452C	Pineapple Chunks	36,990	\$0.40

The purchase would be conditioned to following:

- Disclosure of origin and producer (with corresponding documents): Superior needs to verify that product has been produced in a facility approved by Superior Foods in order to resell.
- Submittals of Certificate of Analysis (COA): Superior Quality Assurance and Food Safety team needs to review COA for each lot to make sure that product meets bacteriology and regulatory standards to satisfy compliance issues.
- Assurance from Imperial representatives that these lots have not been placed on “hold” due to quality issues.
- Guarantee that none of these totes or cartons are damaged (inspection upon loading).

(b) PACA claims will not be asserted in the \$225,000.

(c) The following PACA claims asserted by Superior are associated with former sales, which are not connected to the \$766,919.41 disputed inventory/\$225,000 offer.

- (i) Superior Foods, Inc. - \$7,260.80.
- (ii) Superior Foods International LLC - \$318,394.01.

(d) Superior will purchase approximately \$766,919.41 of disputed “consignment” inventory for \$225,000, or such higher amount necessary to obtain the consent of Ares, which higher amount must be accepted by Superior, with no reservation of rights regarding the “consignment” assertion, less the amount of unpaid fees to be paid by Superior to Lineage (this amount now approximates \$80,000 and increasing). Superior retains its right to assert any PACA claim it may have as set out in (c) above.

(e) Superior pays Lineage its unpaid fees relating to the sold inventory (approximating \$80,000).

(f) Superior pays \$250,000, or such larger amount necessary to obtain the consents of Ares and Tree Line, which higher amount, if any, must be accepted by Superior, to the Trustee for Termination and release of Superior from the Covenant-not-to-compete. Superior wires \$250,000 to the Trustee upon its acceptance of this counteroffer, to be held subject to Court approval of the settlement.

(g) The parties agree to a mutual release of all claims, other than Superior retaining its right to assert a PACA claim.

11. Allowance of this Motion on an emergency, ex parte basis is in the best interests of the Debtor, and its creditors, and the Chapter 7 estate. Such allowance will facilitate a swift and orderly liquidation of the Other Assets, and enable the pursuit and consummation of the sales of Food Product where such sale offers are linked and conditioned upon approval of the sale of Other Assets.

12. Under the emergency circumstances of this case, no notice or further opportunity for hearing is feasible, possible, or practical.

WHEREFORE, the Trustee respectfully requests that the Court enter an Order:

1. Approving and allowing this Motion.

2. Authorizing and allowing a compromise and settlement resolution with Superior Foods Inc. and Superior Foods International LLC on the terms set out in Paragraph 10 above, including (i) resolution and termination of a Covenant-Not-To-Compete held by, and in favor of Imperial Frozen Foods Op Co, LLC, and (ii) resolution and settlement of a disputed ownership of "consignment" inventory, subject to the necessary subsequent written consents of Ares and Tree Line, and

3. For such other and further relief as the Court may deem appropriate.

This the 18th day of December, 2019.

s/Gregory B. Crampton

Gregory B. Crampton  
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Chapter 7 Trustee  
NICHOLLS & CRAMPTON, P.A.  
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CERTIFICATE OF SERVICE

It is hereby certified that the foregoing **EMERGENCY EX PARTE MOTION FOR APPROVAL OF COMPROMISE AND SETTLEMENT WITH SUPERIOR FOODS INC. AND SUPERIOR FOODS INTERNATIONAL LLC** was served this day by CM/ECF electronic e-mail service or by placing a copy thereof in a depository under the exclusive care and custody of the United States Postal Service in a postage prepaid envelope and properly addressed as follows:

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This the 18th day of December, 2019.

*s/Phyllis W. Hill*

Phyllis W. Hill, Paralegal